

Turning Suspicion into Evidence

Challenging Current Policy and Justice Responses of Human Trafficking and Labour Exploitation

Panel Discussion: From Suspicion to Evidence – a Reality Check

The Impact of Responses and the Need for Improved Criminal Justice Responses

Dr. Vera Gracheva, Independent Expert on CTHB, Russian Federation

'It is important to target the perpetrators, including those adding and abetting human trafficking, along the entire continuum.'

Let me start by sharing my strong belief that we may have both, suspicion and evidence, and still fail to achieve proper results – I mean efficient investigation of a case, access to justice and sufficient prosecution. What is the most widely spread hampering factor? It is corruption affecting certain areas prone to complicity and abused by traffickers - law enforcement, migration, labour inspectorates, judiciary and prosecution – especially if it concerns cases of THB for labour exploitation. And, above all, the lack of authority for many relevant officials to start a criminal case without victims' testimony or report. Why? Because the demand for cheap labour motivates employers to violate migration regulations and bribe the law enforcement – it is cheaper than to observe the law. And the criminal assets for all these officials are too tempting and they often prefer to ignore the evidence. Employers who engage irregular workers usually bribe officials to avoid enforcement of penalties. As a maximum, we can expect fines for minor violations of labour law, or a completely different qualification of a crime turning THB for labour exploitation or forced labour and slavery into illegal deprivation of freedom, or violations in the recruitment procedure and regulations.

A few words about THB for labour exploitation in Russia. Starting from 2006, Russian experts, in conformity with IOs, have been providing evidence proving that THB for labour exploitation has become predominant and affects both, nationals and migrants, occurring in multiple forms and in numerous economic sectors. The latest research on this issue appeared in March 2015 under the auspices of the CBSS Task Force on CTHB, Russian MFA and the ADSTRINGO project.

Drawing from this research, it is hard to say what we don't have in Russia from a long open-ended list of forms of THB-related exploitation, as defined by the ILO ("all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"):

- THB for labour exploitation in such sectors as construction, agriculture, fishing, underground garment factories, food processing, marketplaces, grocery stores, communal services (most corrupted, migrants are paid twice less than nationals), hospitality and tourism, transport, waste sorting, and street sweeping, exploitation in the public and private care sectors, forestry (logging – cases of forced labour affecting annually North Korean workers in the Russian Far East who comprise 20,000 labour force from NK), etc.; construction business is reported to practice the transfer of migrants' brigades from one employer to another one (for certain price) after the conclusion of the work at the first site;
- THB for exploitation in private households,
- THB for sexual exploitation, including sexual exploitation on-line;

- THB for exploitation in forced and organized begging;
- THB for exploitation in criminality;
- THB for “mixed” forms of exploitation (labour and sexual) and internal trafficking in all of these forms;
- Child trafficking for all forms of exploitation; recently there appeared a research by a Russian expert on labour exploitation of children-migrants in Moscow;
- THB for exploitation for terrorist purposes and for participation in illegal contingents in armed conflicts;
- THB through illegal adoption (with the purpose of exploitation),
- forced marriages (which also has the purpose of further exploitation);
- THB-related cases of exploitation in the form of debt bondage (affecting 15 per cent of migrant workers);
- recruitment of “mules” to cultivate, transport and sell drugs (those exploited in this form of criminality are always treated as criminals, irrespective of their status – it is never recognized); and
- the sale of babies/infants (frequently by their poor mothers).
- There is scattered information about Russian nationals-victims of THB for organ removal, but, to my opinion, this may be considered as trafficking with abuse of vulnerability for financial gain rather than labour exploitation in its pure form.

All 6 ILO indicators of forced labour are there: physical or sexual violence [threat of and/or actual harm]; restriction of movement; bonded labour; withholding of wages; retention of passports and identity documents; and threat of denunciation to the authorities. But in most cases, especially if victims fall under the category of irregular migrants, no suspicion of trafficking ever arises.

As an example, one out of many recent media reports: migration officers, in co-operation with police, in a raid, searching for 2 Tajik nationals suspected of violence against women and robberies, detained 500 undocumented migrants from a construction site in Moscow. Police was reported to investigate their possible complicity in criminal activities and legality of their status. That’s it. There is no suspicion why these migrant workers do not have identity documents available, and therefore nobody is looking for evidence of violation of their rights. Usually 30 per cent of migrants employed in construction sector do not have documents.

Official and unofficial statistics estimate there are between 10 and 15 million foreign workers in Russia, the majority having no legal status. Many of these migrant workers – according to the Russian researches -20 per cent - experienced exploitative labour conditions characteristic of trafficking cases.

Investigation and prosecution in 2014 shows a huge gap between the reality and the level of criminal justice:

3 potential sex trafficking suspects and 2 potential labor trafficking suspects (compared with 15 potential sex trafficking suspects and 17 labor trafficking cases in 2013).

And, if we speak about prosecution, we have:

3 defendants in two cases of sex trafficking and 3 defendants in one case of forced labor (compared with 18 sex trafficking prosecutions and 4 labor trafficking prosecutions in 2013).

14 traffickers were convicted under Article 127.1, 9 traffickers were convicted of the use of slave labor (28 defendants convicted under Article 127.1 and four convicted under Article 127.2 in 2013). 8 traffickers were sentenced to imprisonment, and 15 were given suspended sentences.

Suspected cases of trafficking too often result in victims being punished for crimes committed under duress, charged with residing illegally in Russian territory without proper papers and deported victims without offering assistance. Let me give you as an example a recent case of a Tajik woman who was deported in a tragic situation: she and her husband were detained because they were overstaying without registration and their 5-months old baby was taken away by the police from the mother who was breast-feeding him. The boy was wrongly registered as if found without parents, sent to a city hospital and in a few hours died, as it was reported, due to some infection. Parents were deported together with the baby in a coffin.

All in all, slave labour, according to official sources, constitutes 1 per cent of all criminal cases – in conditions of migrant-dependent economy requiring huge supplies of labour force from abroad.

Contrary to the law enforcement approach, there are excellent examples of civil society initiatives against slavery and trafficking. For example, in 2012 NGO “Alternativa” started a project against slavery and rescued over 200 persons from forced labour situations in various regions of Russia. The NGO dealt with labour exploitation (the vast majority of cases), sexual exploitation, and organized begging. Their activities are completely voluntary and not funded by the state at all. Let me show you their website – www.protivrabstva.ru - registering every case of success in terms of persons freed from slavery. Yesterday I spoke to the activists of this organization and asked them about any court cases based on the evidence provided by the NGO or by the victims. No, not yet, they don't have information about prosecution of offenders because the victims prefer not to report the case to the police and the organization does not have qualified lawyers to support them. A widely reported case of THB for labour exploitation which caused joint hearings of the Civic Chamber and the Human Rights Council under the President of Russia a year ago, was closed within 2 days, reopened and closed again. And even this one was treated as illegal deprivation of freedom. A few words about the case:

Moscow. A shop, grocery store, owned by a family from Kazakhstan. And 11 persons, men and women, recruited by this family and their relatives from Central Asia. They were kept in slavery for 10 years.

«We could not go out, we were living in a cellar – day and night. We could not escape” – they say.

They came from Uzbekistan and Kazakhstan – they were promised to get good employment and good salary: instead they were staying in the cellar, sleeping 2-3 hours per night on the floor, eating potatoes and rotten bread, and working without intervals. They were beaten regularly – they have broken teeth, broken fingers, broken ears, head traumas, lots of scars on their backs

and chests. Their documents were detained, they were not given any money for their work – until they were rescued by this NGO which got information from parents of a young girl who was missing for years. The children born in the cellar were kept chained to a heater – they did not know how to talk and were all the time afraid of any contacts. Their mothers were not permitted to see them – some were taken away right after birth, either kept there as a sort of pressure, or sent to Kazakhstan and sold.

The victims did not feel safe even after they were rescued. The owners of the shop were threatening their relatives. None of the victims could even think of an escape. A few attempts to run away and appeal to the local police were a complete failure – the victims were returned by the police to the owners and all were severely punished – in front of others. Video-cameras were places in every corner of the shop to watch the victims. They were forbidden to talk to each other and, certainly, to the customers of the shop. Raped, forcefully addicted to alcohol, deprived of any will to defend themselves. A few children were forced to work, to carry heavy things, and all of them have scars and broken parts of the body from severe punishment. In two cases the victims tried suicide, as the only way out of slavery.

Customers, suspecting a strange situation, called the police from time to time, the police used to come to the shop and get back with bags full of food and drinks.

Cases like that are multiple – a few hundred Vietnamese victims found at an underground garment factory, cases of victims found in the countryside exploited by farmers, victims found in the woods of Siberia - loggers, victims forced to beg...

What is missing to solve the problem that has grown into a massive crime? The will, the political will and a clear instruction – no more slavery; Tolerance and ignorance common in the society-at-large more concerned about illegal migration and ethnic criminality; Lack of special training for the police, labour inspectors, migration officials, social services, and many others. A clear-cut position of State authorities should be formulated and sent from the top to the ground. It does not happen yet – there are other political priorities, and to turn this machine in another direction needs a huge effort – by the media, by NGOs and human rights defenders, international community. So that the perpetrator, including those adding and abetting human trafficking are targeted along the entire continuum.